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BELLSOUTH

Ben G. Almond
Executive Director-
Federal Regulatory

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January 17, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RECEIVED

JAN 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Dockets 94-90 and 86-3; Eligibility for Specialized Mobile
Radio Service and Mobile Radio Services in the 220 MHz Band/Use
of Radio Dispatch Communications
Ex Parte

Dear Mr. Caton:

You are hereby notified that on January 17, 1995 Charles P. Featherstun and Ben Almond, both of BellSouth Corporation met with Rosalind K. Allen, David Furth and Kathleen O'Brien Ham, all of the Federal Communications Commission (FCC). During the meeting we discussed issues associated with the above referenced proceedings as well as the FCC Status Report to the D.C. Circuit Court, BellSouth Corp. v. FCC, Case No. 92-1334 (Termination Order Appeal). The attached document was used for discussion purposes. This document had been previously filed with your office on January 10, 1995.

Please associate this notice and accompanying materials with Docket 94-90.

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Ben G. Almond
Executive Director-Federal Regulatory

Attachment

cc: Rosalind K. Allen
David Furth
Kathleen O'Brien Ham

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List A B C D E

STAMP & RETURN

Jim O. Llewellyn
General Attorney

BellSouth Corporation
Legal Department-Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
404 249-4445
Fax: 404 249-5901

January 10, 1995

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Rm. 610
Washington, D.C. 20554

OFFICE OF
GENERAL COUNSEL

JAN 10 4 50 PM '95

Re: FCC Status Report To The D.C. Circuit
BellSouth Corp. v. FCC, Case No. 92-1334 (*Termination Order Appeal*)

Dear Mr. Kennard:

On November 2, 1994, the Court of Appeals released an *Order* which refused to grant the Commission's motion to dismiss BellSouth's appeal of the FCC's *Termination Order* in PR Docket 86-3. The Commission's order under appeal terminated a rulemaking begun in 1986 to eliminate 47 C.F.R. § 90.603(c) (originally adopted without any notice or comment) which prohibits wireline telephone common carriers from controlling SMR licensees. The Commission's motion to dismiss was based on the pendency of a new rulemaking which proposes to eliminate the rule. See *Eligibility For the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Notice of Proposed Rulemaking*, 9 FCC Rcd. 4405 (1994) ("*NPRM*"). Rather than dismiss the case, however, the court directed the FCC to report on the status of the *NPRM* by January 31, 1995 and warned that the court normally allows in the first instance agencies "'to cure their own mistakes rather than wasting the courts' and the parties' resources.'" *BellSouth Corp. v. FCC*, Case No. 92-1334, *Order* (D.C. Cir. Nov. 2, 1994).

The FCC originally proposed to eliminate the rule in 1986 and almost all of the comments, which were received by 1987, supported elimination of the rule. Nevertheless, the Commission failed to act until the proceeding was inexplicably terminated in 1992. In the instant proceeding, the Commission again proposes to eliminate the rule. Twenty nine parties submitted comments and only one party opposed elimination of the rule. The pleading cycle concluded on October 20, 1994. Since efforts to eliminate the rule began in 1986, this matter clearly is ripe for action.

BellSouth, in particular, has been and will be affected by any additional delays. On September 22, 1993, RAM Mobile Data USA Limited Partnership, RAM Communications,

William E. Kennard
January 10, 1995
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Commission with an accompanying waiver request. No action has been forthcoming, despite the fact that the waiver was placed on public notice on April 12, 1994 (FCC Public Notice, DA 94-329) and generally was supported by the commenters.

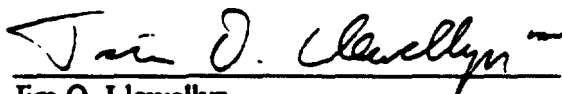
As we mentioned in our letter to you, dated July 21, 1994, BellSouth is affected adversely in spectrum auctions when its regulatory status is unclear. If the Commission will act on the pending rulemaking, the problems set forth in that letter can be avoided for the upcoming auctions involving SMR licenses.

January 31, 1995 will be 90 days after the court's *Order*, and over 100 days since the close of the pleading cycle in the *NPRM*. There is no apparent reason why a decision cannot be issued by January 31, 1995. Representatives of BellSouth's Washington, D.C. office will be calling for an appointment (during the week of January 16, 1995) to discuss the status of the pending unrestricted rulemaking.

Thank you for your attention to this matter.

Sincerely,

BELLSOUTH ENTERPRISES, INC.


Jim O. Llewellyn

1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-4445

cc: Karen Brinkman (by hand)
Regina Keeney (by hand)
Roslyn Allen (by hand)
David Furth (by hand)
All commenters
Office of the Secretary (GN Docket No. 94-90)